

## Agency 27

# Kansas Energy Office

### Editor's Note:

The Kansas energy office was abolished on July 1, 1983. Powers, duties and functions were transferred to the Kansas corporation commission, see Agency 82. See K.S.A. 74-622.

### Articles

- 27-1. PRIORITIES FOR ALLOCATION AND CURTAILMENT OF CONSUMPTION OF ENERGY RESOURCES.
- 27-2. MAXIMUM LIGHTING STANDARDS.
- 27-3. PETROLEUM ALLOCATION APPEAL PROCEDURES.

### Article 1.—PRIORITIES FOR ALLOCATION AND CURTAILMENT OF CONSUMPTION OF ENERGY RESOURCES

**27-1-1. Purpose.** The purpose of these rules and regulations is to establish a system of priorities for the allocation of available energy resources, other than agricultural fertilizers, and the curtailment of the consumption of such energy resources during any energy emergency as proclaimed by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.* Such an energy emergency may embrace a variety of circumstances. The spectrum may range from a serious shortage of one or more of the basic energy resources, commonly in use, sufficient to cause a significant disruption of essential services, to a shortage of such severity as to require emergency services on a scale envisioned for natural disasters. In the lower range, allocation and/or curtailment would be considered necessary to eliminate danger, prevent undue hardship, and restore economic activity and a basic well being; in the extreme case energy resources would be devoted to maintaining essential functions in order to sustain life and property. These rules and regulations shall apply to all suppliers and consumers of such energy resources not subject to regulation as to allocation or curtailment by any federal agency. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

**27-1-2. Definitions.** 1. Available energy resources: Those energy resources, other than ag-

ricultural fertilizers, commonly in use at the time of an energy emergency as declared by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.*

2. Allocation: Allotment or division of available energy resources according to certain priorities set forth below.

3. Curtailment: Reduction or interruption of service or consumption of energy resources being provided, in accordance with certain priorities set forth below. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

**27-1-3. Priorities.** Priorities for allocation of available energy resources, other than agricultural fertilizers, in the event of an energy emergency declared by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.*

1. First priority shall be given to emergency services and directly concerned with the protection and safeguarding of public health, safety and welfare; maintenance of hospitals, nursing homes, and other institutions providing physical and mental health care. Included in this priority is the maintenance of gas and electrical service as well as emergency transportation in support of these emergency services.

2. Second priority shall be given to gas and electrical service for: domiciles, to include individual homes, apartments, and other residential units which normally provide transient or permanent housing (hotels, motels); for facilities which are converted to and used for temporary shelter or housing; and to meet domiciliary needs of correctional institutions.

3. Third priority shall be given to production, processing and refining, and the transportation and distribution of oil, natural gas and other hydrocarbons.

4. Fourth priority shall be given to the sustaining of essential agricultural operations and the processing of agricultural products. This includes agricultural pursuits directly supporting and safeguarding dairy, ranching, and feedlot operations. This priority shall also be given to industrial and commercial requirements for plant protection.

5. Fifth priority shall be given to: the maintenance of required public services, including facilities and services provided by municipal, cooperative, and investor-owned utilities; transportation facilities or services which serve the public at large; and state and local government operations. Curtailment of energy resources required to power, fuel, or energize operations and services described in this priority shall not interrupt or unduly curtail similar services required to meet needs of a higher priority.

6. Sixth priority shall be given to: commercial and business activities selling goods and services; schools and educational institutions; and the maintenance of private transportation.

7. Seventh priority shall be given to: industrial plants for operations beyond the needs specified in paragraph four (4) above; and for the exploration of oil, natural gas, and other hydrocarbons. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

**27-1-4. Curtailment and allocation procedures.** 1. The priorities set forth in Section 3 apply, as appropriate, to all fuels and energy resources and govern the order of the curtailment process.

2. Curtailment of energy resources will normally be applied in more than one priority grouping simultaneously during a declared emergency; hence lower priority users will not be completely curtailed (interrupted) before higher priority users are required to reduce their levels of consumption. Simultaneous curtailments will be imposed judiciously, in order to preclude or delay the need for complete curtailment within a given priority group.

3. Curtailments and allocation will be applied selectively for one or more energy forms as circumstances dictate. (Authorized by K.S.A. 1976

Supp. 74-6807; effective, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

**27-1-5. Emergency exemption.** Emergency exemption or relief from a curtailment order or allocation procedure may be requested by a consumer. Approval of such requests may be granted by the Director, Kansas Energy Office or such authorized officer or agency, upon a showing that the allocation or the curtailment order would cause irreparable injury to life or property. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

## **Article 2.—MAXIMUM LIGHTING STANDARDS**

**27-2-1.** (Authorized by K.S.A. 1979 Supp. 58-1313; effective, E-80-24, Dec. 12, 1979; effective May 1, 1980; revoked March 12, 1999.)

## **Article 3.—PETROLEUM ALLOCATION APPEAL PROCEDURES**

**27-3-1. Purpose and scope.** This document establishes the procedures for the filing of an administrative appeal of state set-aside actions. A person who has appeared before the Kansas energy office (K.E.O.) in connection with a matter arising under these procedures has not exhausted all administrative remedies until an appeal has been filed under this article and an order granting or denying the appeal has been issued. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-2. Definitions.** (a) "Director" means the director of the Kansas energy office created in K.S.A. 74-6802.

(b) "State set-aside" means the allocated petroleum product which is made available for utilization by a state to resolve emergencies and hardships due to fuel shortages.

(c) "State set-aside order" means an authorizing document issued by the fuels allocation section of the Kansas energy office which represents a call on a supplier's set-aside volume for the month of issuance.

(d) "Assignment" means a recommendation by the fuels allocation section of the Kansas energy office to the United States department of energy to designate an authorized purchaser to be supplied petroleum product at a specific quantity level by a specified supplier.

(e) "Fuels allocation section" means the per-

sonnel assigned to the fuel allocation officer positions of the Kansas energy office who act for the director in serving as special coordinator and administrator for federal mandatory fuel allocation programs in this state as required by K.S.A. 74-6804(b). (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-3. Who may file.** (a) A person aggrieved by a state set-aside order of the fuels allocation section may file an appeal in accordance with the procedures set forth herein.

(b) A person aggrieved by an order of the fuels allocation section to recommend a denial of an application for assignment of a supplier may file an appeal in accordance with the procedures set forth herein.

(c) If the fuels allocation section fails to take action on a set-aside request within ten (10) business days of a filing of an application, the applicant may treat the application as having been denied in all respects, and file an appeal with the director.

(d) If the allocation officer fails to take action on an application for assignment within ninety (90) days of a filing, the applicant may treat the application as having been denied in all respects and may file an appeal with the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-4. Filing of appeal.** (a) Any person aggrieved by a set-aside order may file an appeal with the director of the Kansas energy office. Such appeal shall be filed by mail or in person within fifteen (15) days after the date the decision being appealed was mailed by the fuels allocation section.

(b) A person desiring to make an appeal concerning the denial of the application for assignment shall file an appeal with the director of the Kansas energy office. Such appeal shall be filed by mail or in person within thirty (30) days after the decision appealed from was made by the fuels allocation section.

(c) A person filing under this part shall file an appeal which should be clearly labeled as such, both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing and signed by the person filing the appeal.

(d) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under these procedures the appellant shall state the reasons

therefore. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-5. Where to file.** The appellant shall file an appeal with the director of the Kansas energy office, 214 West Sixth Street, Topeka, Kansas 66603. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-6. Form of appeal.** (a) All appeals shall be in writing and signed by the appellant or a duly authorized representative. It shall designate clearly on its face that it is an appeal; contain a concise statement of the grounds for appeal and the requested relief, and, may be accompanied by any documents or briefs, if any, which pertain to the appeal.

(b) The appeal, when filed in person shall be considered filed on the date delivered to the director of the Kansas energy office. An appeal, when filed by mail shall be considered filed on the date of the postmark. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-7. Notice.** (a) The appellant shall mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted, to those persons whom it is reasonable and possible to notify and who is reasonably ascertainable by the appellant as a person who will be aggrieved by the set aside action. The appeal filed with the director shall include certification to the director that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was mailed.

(b) The director shall serve notice on any other person readily identifiable by the director as one who will be aggrieved by the set-aside action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within ten (10) days of the service of that notice.

(c) Any person submitting written comments regarding the appeal filed under these procedures shall send a copy of the comments, or a copy from which confidential information has been deleted, to the appellant. The person shall certify to the director that it has complied with the requirements of this paragraph. The director may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond. (Authorized by and im-

plementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-8. Contents of appeal.** The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, rulings, regulations, interpretations, decisions and circumstances relied upon to support the appeal. There shall be a complete description of the events, acts, or transactions that comprise the circumstances, and a statement of why any new or newly discovered facts were not or could not have been presented at the time the request for assignment or state set-aside was submitted. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-9. Evaluation.** (a) The director may initiate an investigation of any statement in an appeal and utilize in evaluation any relevant facts obtained by such investigation. In evaluating an appeal, the director may consider any other source of information, and, on the director's own initiative, may convene a conference or hearing. If the director determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the director may dismiss the appeal with leave to amend at a specified time. If failure to supply information is repeated or willful, or not submitted in a timely manner, unless good cause is shown, the director may dismiss the appeal with prejudice.

(b) If the appellant fails to satisfy the requirements of subsection (a) or K.A.R. 27-3-8, the director may issue a denial of the appeal. The denial shall state the grounds for denial and a copy of the denial shall be served upon the appellant and other persons participating in the proceeding. The denial shall become final within ten (10) days of its service upon the appellant unless within such ten (10) day period an amendment to the appeal correcting identified deficiencies is filed with the director. Within ten (10) days of filing such amendment, the director shall notify the appellant whether the amendment corrects the deficiencies. If the amendment does not correct the deficiencies, that notice shall be a denial of the appeal as amended. A denial by the director shall be a final decision of the administrative appeal remedies.

(c) The director may deny an appeal if the appellant does not establish that:

(1) the appeal was filed by a person aggrieved by the fuels allocation section action,

(2) the fuels allocation section action was erroneous in fact or in law, or

(3) the fuels allocation section action was arbitrary or capricious. The denial of an appeal shall be a final decision of the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-10. Scheduling of hearing.** Upon written receipt of the notice of appeal and all pertinent documents, if any, from the fuels allocation section, the director shall schedule an appeal hearing within a reasonable period of time, taking into consideration the convenience with which all interested parties can attend and circumstances surrounding the appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-11. Notice of hearing.** Upon the scheduling of a hearing on an appeal, notice of the hearing shall be mailed by the director to the appellant, all interested parties and the fuels allocation section, at least ten (10) days before the date of the hearing, specifying the time and place of such hearing. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-12. Conduct of hearing.** All hearings shall be conducted informally and in such manner as to ascertain all the facts and the full rights of the parties. The appellant and any third party may present such evidence as may be pertinent to the issues involved. The director may receive any evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. Where a party appears in person, the director may examine such party and his witnesses, if any, to such extent as the director deems necessary. During the hearing, the director may, with or without notice to any of the parties, take such additional evidence as the director deems necessary, provided, however, that the appellant is afforded the opportunity to respond to such submissions or evidence. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-13. Continuance of hearing.** For good cause shown continuances and extensions of time for hearing may be granted by the director upon request of the party or parties to the appeal.



(Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-14. Failure to appear.** If any party or parties who have originated an appeal shall fail to appear personally or by attorney or representative at the time when, and place where, the hearing of such appeal has been set, the director may dismiss such appeal upon motion provided that the director shall first find that the party or parties appealing have been properly notified as to the date, time and place of such hearing. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-15. Petition for reopening the hearing.** Any party who fails to appear at a hearing may within twelve (12) days thereafter, petition for reopening of the hearing. Such petition shall be granted if it appears to the director that the petitioner has shown good cause for failure to attend. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-16. Withdrawal of appeal.** An appellant desiring to withdraw an appeal may file a written withdrawal statement prior to or during the hearing. The director may grant or deny such application and shall immediately notify the parties of such action. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-17. Representation during appeals.** Appellants may appear for themselves in any appeal proceedings. A partnership may be represented by any of its members or a duly authorized representative. Corporations and associations may be represented by an officer or by an attorney-at-law who has been admitted to practice in accordance with the laws of the State of Kansas.

An appellant may be represented by an attorney-at-law who has been admitted to practice in accordance with the laws of the State of Kansas. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-18. Decision.** Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the director shall, within thirty (30) days, announce findings of fact and a decision with respect to the appeal.

The decision shall be a written statement setting forth the relevant facts and reasons for the decision. The decision shall state that it is a final decision of the director. The decision shall be signed by the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-19. Notification of decision.** Copies of all decisions shall be mailed by the director to the appellant, and to all other parties to the appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-20. Information.** Upon request, the director will furnish information as to conduct, and procedure for appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

**27-3-21. Inspection of decisions.** Copies of all decisions of the director, with such modification as is necessary to insure confidentiality, shall be kept on file and open for inspection in the Kansas energy office in Topeka, Kansas. Such decisions and determinations shall be open to public inspection during normal business hours of any working day. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)